

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

LINDA J. ANGEL, Individually, and as)
Special Administrator of the ESTATE OF)
KENNETH D. ANGEL, deceased, and)
ANGELS', INC.,)

Plaintiffs,)

vs.)

NEBRASKA PUBLIC POWER DISTRICT,)

Defendant.)

Case No. _____

COMPLAINT

COME NOW Plaintiffs, Linda J. Angel, Individually, and as Special Administrator of the Estate of Kenneth D. Angel, deceased, and Angels, Inc. (collectively, "Plaintiffs"), by and through their counsel, and for their Complaint against Defendant, Nebraska Public Power District, state and allege as follows:

PARTIES

1. Plaintiff, Linda J. Angel ("Mrs. Angel"), is a resident of Alvo, Cass County, Nebraska. Plaintiff is the Special Administrator of the Estate of Kenneth D. Angel, deceased ("Mr. Angel"). At all material times herein, Mrs. Angel and Mr. Angel were married to each other; Mr. Angel was the biological father of Jared Angel and Kristin Angel; and Mr. Angel's two step-sons were Michael Franklin and Zachariah Wood.

2. Plaintiff, Angels', Inc., is a Nebraska corporation, with its principal place of business located in Spencer, Holt County, Nebraska.

3. Defendant, Nebraska Public Power District ("NPPD"), is a publicly-owned utility, with its principal place of business located in Columbus, Platte County, Nebraska. NPPD is a political subdivision of the State of Nebraska.

4. The Nebraska Department of Natural Resources ("NDNR") is an agency of the State of Nebraska, with its principal place of business located in Lincoln, Lancaster County, Nebraska.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over the above-captioned lawsuit pursuant to NEB. REV. STAT. §24-302 because there is an actual and justiciable controversy between the parties to this lawsuit.

6. This Court has personal jurisdiction over NPPD and NDNR pursuant to NEB. REV. STAT. §25-536 because they have caused a tortious injury in Nebraska and have transacted business and/or supplied services or goods in Nebraska. In addition, personal jurisdiction over NPPD and NDNR complies with the Constitutions of Nebraska and the United States.

7. Venue is proper in Holt County, Nebraska, pursuant to NEB. REV. STAT. §25-403.01 because a substantial part of the events that gives rise to the above-captioned lawsuit took place in that County.

BACKGROUND

8. The Spencer Dam is a water dam located on or near the Niobrara River in Holt County, Nebraska (hereafter, "Spencer Dam").

9. The Spencer Dam was constructed in or around the year 1927 and was 92 years old as of March 2019.

10. At all times material herein, including, but not limited to, on March 14, 2019, NPPD was the owner, operator, and/or manager of the Spencer Dam.

11. At all times material herein, including, but not limited to, on March 14, 2019, NDNR was the operator and/or manager of the Spencer Dam.

12. At all times material herein, including, but not limited to, on March 14, 2019, NPPD and NDNR were responsible for the construction, operation, and maintenance of the Spencer Dam.

13. At all times material herein, including, but not limited to, on March 14, 2019, NPPD and NDNR were responsible for inspecting, supervising, and regulating the construction, operation, maintenance, and management of the Spencer Dam.

14. At all times material herein, including, but not limited to, on March 14, 2019, NPPD and NDNR were responsible for the construction, operation, and maintenance of the Spencer Dam to protect life and property from dam failures and/or breaches involving the Spencer Dam.

15. At all times material herein, including, but not limited to, on March 14, 2019, NPPD and NDNR, and each of them, were engaged in a joint venture, employment, and/or agency relationship with regard to the ownership, operation, management, control, supervision, construction, and/or maintenance of the Spencer Dam. NPPD's and NDNR's actions and/or inactions described more fully herein were committed in the course and scope of NPPD's and NDNR's joint venture, employment, and/or agency relationship.

16. At all times material herein, Mr. and Mrs. Angel owned real property, personal property, and improvements located at or near 49221 W. Power Road, Spencer, Holt County, Nebraska, 68777 (hereafter, "Angel Property"). The Angel Property is located in close proximity to the Spencer Dam.

17. At all times material herein, Angels', Inc., owned real property, personal property, and improvements located at or near 89541 Power Road, Spencer, Holt County, Nebraska, 68777 (hereafter, "Angels', Inc. Property"). The Angels', Inc. Property is located in close proximity to the Spencer Dam.

18. The Angel Property and the Angels, Inc. Property are collectively referred to herein as the "Properties."

19. At all times material herein, including, but not limited to, on March 14, 2019, Mr. and Mrs. Angel operated a spray business on the Angel Property.

20. At all times material herein, including, but not limited to, on March 14, 2019, Angels', Inc., operated businesses on the Angels', Inc. Property, including, but not limited to, a bar and restaurant, campgrounds, and other entertainment matters.

21. On or about March 14, 2019, the Spencer Dam and/or its levees, dikes, waterways, gates, floodgates, buildings, materials, maintenance, and/or other components (collectively, "Dam") failed, breached, and/or collapsed, which caused water, ice, soil, and other matter to improperly spill and/or overflow out of the Dam and onto the Properties (hereafter, "Incident").

22. The Incident destroyed the Angel Property and the Angels', Inc. Property.

23. The Incident demolished the buildings, improvements, and personal property located at the Properties. Due to the Incident, these buildings, improvements,

and personal property are completely gone from the Properties and have been replaced by water and sand.

24. As a result of the Incident, Mr. Angel was injured and lost his life.

25. After the Incident, the County Court of Holt County, Nebraska, entered an Order on June 4, 2019, declaring that Mr. Angel was deceased and that he had perished due to drowning.

FIRST CAUSE OF ACTION:
WRONGFUL DEATH CLAIM

26. Plaintiffs hereby reincorporate Paragraphs 1 through 25 of their Complaint as if fully set forth again.

27. Plaintiffs' first cause of action against NPPD is a wrongful death claim against NPPD and is brought solely in the name of Linda J. Angel, as the Special Administrator of the Estate of Kenneth D. Angel, deceased.

28. With regard to Mrs. Angel's wrongful death claim against NPPD, she hereby asserts and incorporates herein the following three counts / claims / legal theories against NPPD.

29. The damages Mrs. Angel seeks against NPPD on her wrongful death claim are identified in Paragraph 61, including all subparagraphs therein, of Plaintiffs' Complaint and are incorporated herein by this reference.

COUNT ONE:
NEGLIGENCE CLAIM

30. Plaintiffs hereby reincorporate Paragraphs 1 through 29 of their Complaint as if fully set forth again.

31. The Incident, the resulting injuries and death of Mr. Angel, the damages to the Properties, and the damages suffered by Mrs. Angel and Angels', Inc., were a direct and proximate result of the negligence of NPPD and NDNR and/or their agents and/or employees, and each of them, which consisted of, but is not limited to, one or more of the following actions and/or omissions:

- (a) Failing to prevent the Dam from failing, breaching, and/or collapsing;
- (b) Failing to mitigate the dangers, hazards, and losses through a failing, breach, and/or collapsing of the Dam;

- (c) Failing to use reasonable care to properly and safely design, operate, manage, control, supervise, monitor, construct, and/or maintain the Dam;
- (d) Failing to use proper design, engineer, and/or construction practices, procedures, services, and/or work with regard to the Dam;
- (e) Failing to properly warn Mr. Angel, Mrs. Angel, and Angels', Inc., that the Dam was going to fail, breach, and/or collapse;
- (f) Failing to use reasonable care to provide adequate and/or proper warnings and/or instructions about the Dam, including, but not limited to, providing adequate and/or proper warnings and/or instructions about the dangers of the Dam, the dangers of the Dam failing, breaching, and/or collapsing, the consequences of the Dam failing, breaching, and/or collapsing, and the defects in the Dam;
- (g) Failing to warn Mr. Angel, Mrs. Angel, and Angels', Inc., about the Dam, including, but not limited to, the defects in the Dam and the danger of the Dam failing, breaching, and/or collapsing;
- (h) Failing to properly inspect and/or test the Dam despite having notice that the Dam contained a hazard to public health and safety and despite knowing that such failure to inspect and/or test constituted a reckless disregard for the public's health and safety;
- (i) Designing, operating, managing, and/or maintaining the Dam in such a way as to endanger the safety and wellbeing of the Mr. Angel, Mrs. Angel, and Angels', Inc.; and
- (j) Failing to otherwise exercise reasonable and proper care under the circumstances.

32. NPPD and NDNR, and each of them, are vicariously liable for the negligence of their agents and/or employees, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

33. NPPD and NDNR are vicariously liable for each other's negligence, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

COUNT TWO:
NEGLIGENT FAILURE TO WARN CLAIM

34. Plaintiffs hereby reincorporate Paragraphs 1 through 33 of their Complaint as if fully set forth again.

35. The Incident, the resulting injuries and death of Mr. Angel, the damages to the Properties, and the damages suffered by Mrs. Angel and Angels', Inc., were a direct and proximate result of NPPD's, NDNR's, and/or their agents' and/or employees' (and each of them) negligent failure to warn Mr. Angel, Mrs. Angel, and Angels', Inc., about the dangers of the Dam, including, but not limited to, the danger that the Dam was going to fail, breach, and/or collapse, the consequences of the Dam failing, breaching, and/or collapsing, and the defects in the Dam.

36. NPPD and NDNR, and each of them, are vicariously liable for the negligence of their agents and/or employees, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

37. NPPD and NDNR are vicariously liable for each other's negligence, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

COUNT THREE:
NEGLIGENT HIRING, TRAINING, AND SUPERVISION CLAIM

38. Plaintiffs hereby reincorporate Paragraphs 1 through 37 of their Complaint as if fully set forth again.

39. NPPD, NDNR, and their agents and/or employees did not have proper and/or adequate training, knowledge, education, and/or experience in how to appropriately operate, manage, control, maintain, supervise, and/or construct water dams, including, but not limited, the Dam.

40. NPPD and NDNR had a duty to take proper steps and actions to ensure that they and their agents and employees had proper and adequate training, knowledge, education, and experience in how to appropriately operate, manage, control, maintain, supervise, and/or construct water dams, including, but not limited, the Dam.

41. NPPD and NDNR had a duty to supervise the actions of their agents and employees, including, but not limited to, while they attempted to operate, manage, control, maintain, supervise, and/or construct water dams, including, but not limited, the Dam.

42. NPPD and NDNR negligently hired and/or authorized their agents and employees who were responsible for operating, managing, controlling, maintaining, supervising, and/or constructing the Dam because, among other things, they failed to determine and/or confirm that these agents and employees had proper and adequate training, knowledge, education, and experience in how to appropriately operate, manage, control, maintain, supervise, and/or construct water dams, including, but not limited, the Dam.

43. The Incident, the resulting injuries and death of Mr. Angel, the damages to the Properties, and the damages suffered by Mrs. Angel and Angels', Inc., were a direct and proximate result of NPPD's and NDNR's negligent failure to train and/or supervise their agents and employees, which consisted of acts and/or omissions, including, but not limited to, the following:

- (a) Failing to properly train and/or supervise such individuals regarding how, when, and where to warn downstream individuals and property owners of the dangers and risks of the Dam failing, breaching, and/or collapsing;
- (b) Failing to properly train and/or supervise such individuals in how to operate, manage, control, supervise, monitor, construct, maintain, inspect, and/or test the Dam; and
- (c) Failing to otherwise take proper steps and actions to ensure that such individuals were properly trained and supervised with regard to the Dam.

44. NPPD and NDNR, and each of them, are vicariously liable for the negligence of their agents and/or employees, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

SECOND CAUSE OF ACTION:
SURVIVAL CLAIM AND CLAIM FOR
FUNERAL AND BURIAL EXPENSES AND LOSS OF EARNINGS

45. Plaintiffs hereby reincorporate Paragraphs 1 through 44 of their Complaint as if fully set forth again.

46. Plaintiffs' second cause of action against NPPD is a survival claim against NPPD and is brought solely in the name of Linda J. Angel, as the Special Administrator of the Estate of Kenneth D. Angel, deceased.

47. As a direct and proximate result of the actions and/or inactions of NPPD, NDNR, and their agents and/or employees, and each of them, as more fully described above, Mr. Angel experienced physical and mental pain, suffering, anguish, and emotional distress; passed away; and lost the enjoyment of the rest of his life.

48. With regard to Mrs. Angel's survival claim against NPPD, she hereby asserts and incorporates herein the above three counts / claims / legal theories against NPPD.

49. The damages Mrs. Angel seeks against NPPD on her survival claim are identified in Paragraph 61, including all subparagraphs therein, of Plaintiffs' Complaint and are incorporated herein by this reference.

THIRD CAUSE OF ACTION:
MRS. ANGEL'S AND ANGELS', INC.'S INDIVIDUAL CLAIMS

50. Plaintiffs hereby reincorporate Paragraphs 1 through 49 of their Complaint as if fully set forth again.

51. Plaintiffs' third cause of action against NPPD is for their individual claims against NPPD and is brought solely in the names of Mrs. Angel and Angels', Inc.

52. With regard to Mrs. Angel's and Angels', Inc.'s individual claims against NPPD, Mrs. Angel and Angels', Inc. hereby assert and incorporate herein the above three counts / claims / legal theories against NPPD, as well as the following private nuisance claim against NPPD.

53. The damages Mrs. Angel and Angels', Inc., seeks against NPPD on Plaintiffs' third cause of action against NPPD are identified in Paragraphs 57 and 61(d) of Plaintiffs' Complaint and are incorporated herein by this reference.

COUNT FOUR:
PRIVATE NUISANCE CLAIM

54. Plaintiffs hereby reincorporate Paragraphs 1 through 53 of their Complaint as if fully set forth again.

55. NPPD's and NDNR's actions and/or inactions, as described above, has interfered with Mrs. Angel's and Angels', Inc.'s use and enjoyment of the Properties.

56. NPPD's and NDNR's interference was negligent, reckless, and/or intentional and unreasonable.

57. As a direct and proximate result of NPPD's and NDNR's negligence, reckless disregard, and/or intentional and unreasonable conduct, Mrs. Angel and Angels, Inc., have incurred and/or will incur in the future the following damages: (a) property damage, including, but not limited to, real property, improvement, and personal property damage; (b) lost business, income, revenue, and profits, including, but not limited to, business interruption damages; (c) inconvenience, humiliation, discomfort, annoyance, and nuisance; (d) the loss of use and enjoyment of the Properties, the improvements on the Properties, and Mrs. Angel's and Angels', Inc.'s personal property; (e) depreciation in the value of the Properties; and (f) other general and special damages in an amount to be proven at trial.

58. NPPD and NDNR, and each of them, are vicariously liable for the negligence of their agents and/or employees, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

59. NPPD and NDNR are vicariously liable for each other's negligence, including, but not limited to, under the doctrines of *respondeat superior*, all theories of agency, and/or all theories of joint venture.

**DAMAGES COMMON TO ALL CAUSES OF ACTION
AND COUNTS IN PLAINTIFF'S COMPLAINT**

60. Plaintiffs hereby reincorporate Paragraphs 1 through 59 of their Complaint as if fully set forth again.

61. As a direct and proximate result of the actions and/or inactions of NPPD, NDNR, and their agents and/or employees, and each of them:

- (a) Mrs. Angel and Mr. Angel's next-of-kin have suffered and will continue to suffer all wrongful death damages provided under the law, including, but not limited to, emotional distress, loss of financial support, and the loss of Mr. Angel's society, comfort, companionship, services, support, earnings, consortium, counsel, guidance, care, love, affection, attention, protection, aid, and assistance;
- (b) Mrs. Angel, Mr. Angel, and/or Mr. Angel's next-of kin have incurred and/or will incur funeral and burial expenses and services, as well as the past and future loss of Mr. Angel's earnings, earning capacity, and wages;

- (c) Mr. Angel experienced physical and mental pain, suffering, anguish, emotional distress, disability, disfigurement, and embarrassment; passed away, and lost the enjoyment of the rest of his life; and
- (d) Mrs. Angel, Mr. Angel, Mr. Angel's next-of-kin, and Angels', Inc. have incurred and/or will incur in the future the following damages:
 - (a) property damage, including, but not limited to, real property, improvement, and personal property damage;
 - (b) rental and cover expenses;
 - (c) lost business, income, revenue, and profits, including, but not limited to, business interruption damages;
 - (d) inconvenience, humiliation, discomfort, annoyance, and nuisance;
 - (e) the loss of use and enjoyment of the Properties, the improvements on the Properties, and Mrs. Angel's and Angels', Inc.'s personal property;
 - (f) depreciation in the value of the Properties; and
 - (g) other general and special damages in an amount to be proven at trial.

62. The amount of the damages that Plaintiffs have sustained exceeds the sum of \$5,000,000.00, exclusive of interest and costs.

WHEREFORE, Plaintiffs pray for Judgment against NPPD on their First, Second, and Third Causes of Action for the general and special damages that Plaintiffs have sustained and/or will sustain; prejudgment and post-judgment interest thereon at the highest legal rate; the costs of this lawsuit; attorney fees; and such further relief as the Court deems just and equitable.

DATED this 9th day of October, 2019.

LINDA J. ANGEL, Individually, and as Special
Administrator of the ESTATE OF KENNETH D.
ANGEL, deceased, and ANGELS', INC.
Plaintiffs



By: _____

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IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

LINDA J. ANGEL, Individually, and as
Special Administrator of the ESTATE OF
KENNETH D. ANGEL, decease and
ANGELS' INC.,

Plaintiffs,

vs.

NEBRASKA PUBLIC POWER DISTRICT,

Defendant.

Case No. _____

PRAECIPE FOR SUMMONS

TO THE CLERK OF THE DISTRICT COURT:

Please issue summons for service of the Complaint for certified mail service upon the following Defendant:

Nebraska Public Power District
1414 15th Street
Columbus, NE 68602-0499

DATED this 9th day of October, 2019.

LINDA J. ANGEL, Individually, and as
Special Administrator of the ESTATE OF
KENNETH D. ANGEL, decease and
ANGELS' INC.,

By: /s/ Jordan W. Adam

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